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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2002E-0099, 2002E-0184, and 2003E-0255]

Determination of Regulatory Review Period for Purposes of Patent
Extension; XIGRIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for XIGRIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of three applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of three patents which claim that human biological product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

FOR FURTHER INFORMATION CONTACT:

Claudia V. Grillo,
Office of Regulatory Policy (HFD-013),
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
240-453-6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the

testing phase and approval phase as specified in 35 U.S.C. 156(g) (1) (B) .

FDA recently approved for marketing the human biological product XIGRIS (droctrecogin alpha). XIGRIS is indicated for the reduction of mortality in adult patients with severe sepsis (sepsis associated with severe organ dysfunction) who have a high risk of death. Subsequent to this approval, the Patent and Trademark Office received three patent term restoration applications for XIGRIS (U.S. Patent Nos. 4,775,624; 5,681,932; and 5,270,040) from Eli Lilly & Co., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated December 30, 2002, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of XIGRIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for XIGRIS is 2,493 days. Of this time, 2,193 days occurred during the testing phase of the regulatory review period, while 300 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became

effective: January 26, 1995. The applicant claims January 25, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 26, 1995, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262): January 26, 2001. FDA has verified the applicant's claim that the biological license application (BLA) for XIGRIS (BLA 125029/0) was initially submitted on January 26, 2001.

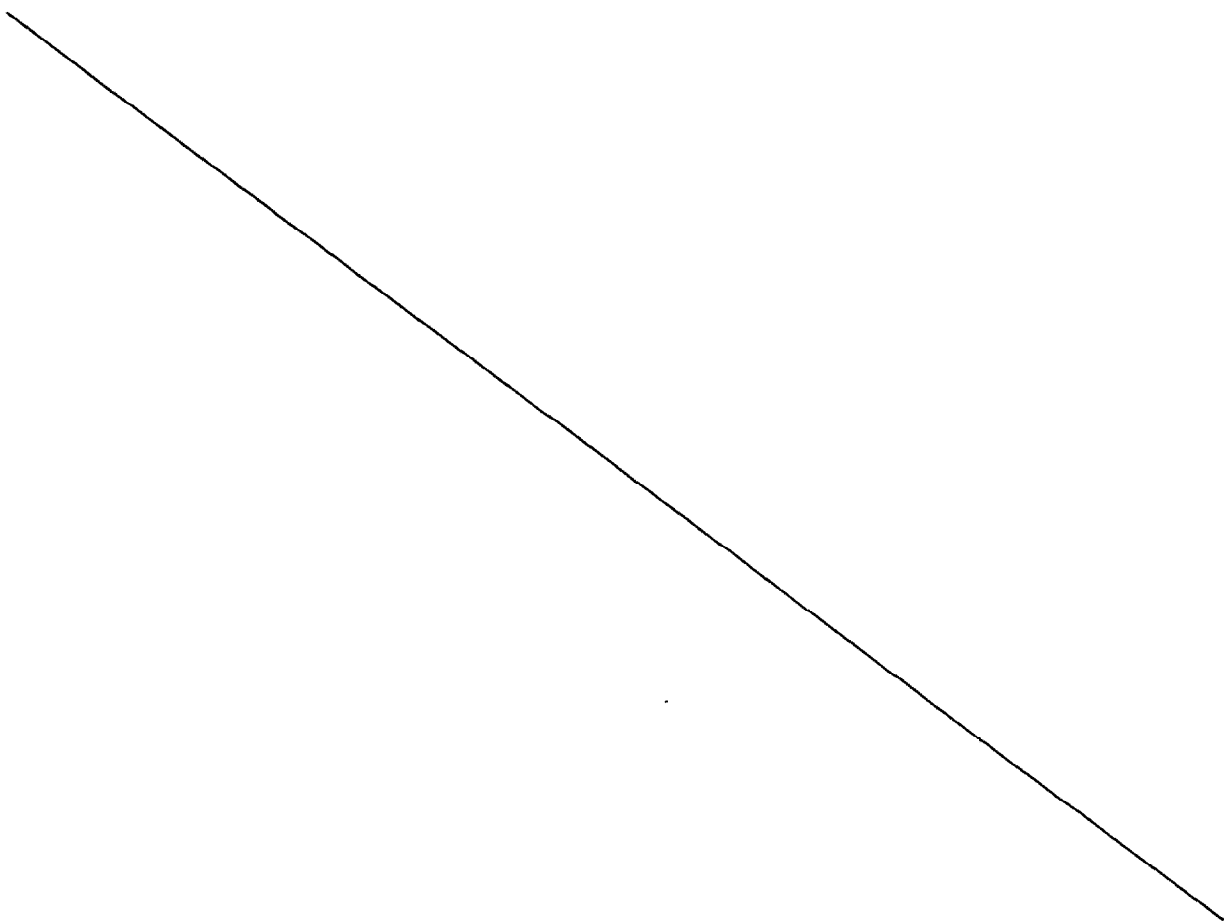
3. The date the application was approved: November 21, 2001. FDA has verified the applicant's claim that BLA 125029/0 was approved on November 21, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,397 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see ADDRESSES) written comments and ask for a redetermination by [insert date 60 days after date of publication in the FEDERAL REGISTER]. Furthermore, any interested person may petition FDA

for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by [insert date 180 days after date of publication in the FEDERAL REGISTER]. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the

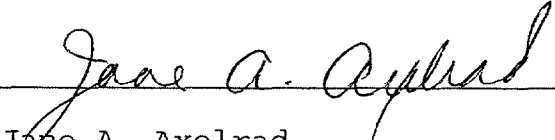


docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets

Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2003.
October 30, 2003



Jane A. Axelrad,
Associate Director for Policy,
Center for Drug Evaluation and Research.

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